

HOUSE BILL NO. 104

INTRODUCED BY K. REGIER

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING CRIMINAL OFFENSES INVOLVING THE DEATH OF AN ~~UNBORN CHILD FETUS OF ANOTHER~~ AND PROVIDING EXCEPTIONS; AND AMENDING SECTIONS 45-5-102 AND 45-5-103, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 45-5-102, MCA, is amended to read:

"45-5-102. Deliberate homicide. (1) A person commits the offense of deliberate homicide if:

(a) the person purposely or knowingly causes the death of another human being; or

(b) unborn child the person purposely or knowingly causes the death of a fetus of another with knowledge that the woman is pregnant; or

(bc) the person attempts to commit, commits, or is legally accountable for the attempt or commission of robbery, sexual intercourse without consent, arson, burglary, kidnapping, aggravated kidnapping, felonious escape, assault with a weapon, aggravated assault, or any other forcible felony and in the course of the forcible felony or flight thereafter, the person or any person legally accountable for the crime causes the death of another human being or unborn child.

(2) A person convicted of the offense of deliberate homicide shall be punished by death as provided in 46-18-301 through 46-18-310, unless the person is less than 18 years of age at the time of the commission of the offense, by life imprisonment, or by imprisonment in the state prison for a term of not less than 10 years or more than 100 years, except as provided in 46-18-219 and 46-18-222."

Section 2. Section 45-5-103, MCA, is amended to read:

"45-5-103. Mitigated deliberate homicide. (1) A person commits the offense of mitigated deliberate homicide when the person purposely or knowingly causes the death of another human being or unborn child purposely or knowingly causes the death of a fetus of another with knowledge that the woman is pregnant but does so under the influence of extreme mental or emotional stress for which there is reasonable explanation or excuse. The reasonableness of the explanation or excuse must be determined from the viewpoint of a reasonable person in the actor's situation.

(2) Mitigated deliberate homicide is a lesser included offense of deliberate homicide as defined in 45-5-102(1)(a), but is not a lesser included offense of deliberate homicide as defined in 45-5-102(1)(b).

(3) Mitigating circumstances that reduce deliberate homicide to mitigated deliberate homicide are not an element of the reduced crime that the state is required to prove or an affirmative defense that the defendant is required to prove. Neither party has the burden of proof as to mitigating circumstances, but either party may present evidence of mitigation.

(4) A person convicted of mitigated deliberate homicide shall be imprisoned in the state prison for a term of not less than 2 years or more than 40 years and may be fined not more than \$50,000, except as provided in 46-18-219 and 46-18-222."

NEW SECTION. Section 3. Definitions. As used in 45-5-102, 45-5-103, and [section 4], ~~"unborn child" means a human who is conceived but is not yet born~~ **"fetus" means an organism of the species Homo sapiens from 8 weeks of development until complete expulsion or extraction from a woman's body.**

NEW SECTION. Section 4. Harm to ~~unborn child~~ fetus of another -- exceptions. The provisions of 45-5-102 and 45-5-103 regarding the death of an unborn child do not apply to acts that are committed pursuant to usual and customary standards of medical practice, including but not limited to:

— (1) emergency medical care; or
— (2) lawful medical procedures, examinations, diagnostic testing, or therapeutic treatment with the consent of the pregnant woman or with the consent of a person authorized by law to act on the woman's behalf. **A PROSECUTION FOR A VIOLATION OF 45-5-102 OR 45-5-103 WITH REGARD TO THE DEATH OF AN UNBORN CHILD FETUS OF ANOTHER MAY NOT BE BROUGHT AGAINST:**

(1) A PERSON FOR CONDUCT RELATING TO AN ABORTION FOR WHICH THE CONSENT OF THE PREGNANT WOMAN OR A PERSON AUTHORIZED BY LAW TO ACT ON HER BEHALF HAS BEEN OBTAINED OR FOR WHICH THE CONSENT IS IMPLIED BY LAW;

(2) A PERSON FOR ANY MEDICAL TREATMENT OF THE PREGNANT WOMAN OR HER UNBORN CHILD FETUS; OR

(3) A WOMAN WITH RESPECT TO HER UNBORN CHILD FETUS.

NEW SECTION. Section 5. Other convictions not barred. A prosecution for or conviction of an offense under 45-5-102 or 45-5-103 is not a bar to conviction of or punishment for any other crime committed by the defendant as part of the same conduct.

NEW SECTION. Section 6. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 7. Codification instruction. [Sections 3 through 5] are intended to be codified as an integral part of Title 45, chapter 5, and the provisions of Title 45, chapter 5, apply to [sections 3 through 5].

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